

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

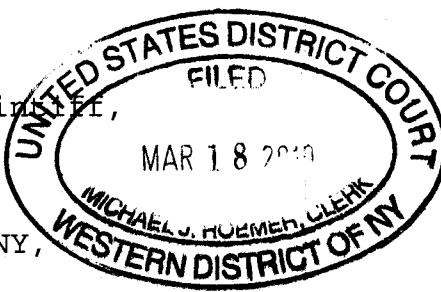
ROBERT MCDONALD,

Plaintiff,

-v-

DRESSER-RAND COMPANY,

Defendant.



09-CV-0408S
ORDER

Plaintiff, Robert McDonald, appearing *pro se*, has been granted permission to proceed *in forma pauperis* (Docket No. 4), and on two prior occasions the Court has directed the Clerk of the Court to cause the United States Marshals Service to serve the summons and complaint on defendant, Dresser-Rand Company. (Docket Nos. 5 and 5). Both attempts at service pursuant to N.Y.C.P.L.R. § 312-a--i.e., by mail--, however, have been returned by the Marshals Service as "unexecuted" with notations as to when the Marshals Service mailed the summons and complaint, with a U.S. Marshal Process Receipt and Return Form ("Marshal Forms"), to defendant (May 20 and December 2, 2009), and that no responses were received nor acknowledgments of service signed nor returned to the Marshals Service by the United State Post Office. (Docket Nos. 6 and 7).

The summons and Marshal Forms, per the Court's usual practice, were completed by plaintiff on both occasions. The first Marshal Form was addressed to Dresser-Rand, 5th Street, Olean, NY 14760 (Docket No. 6); the second Marshal Form was addressed to Dresser-

Rand, 6th Street, Olean, NY 14760 (Docket No. 7). Plaintiff has now completed a third summons and Marshal Form with an address for Dresser-Rand at Paul Clark Drive, Olean, NY 14760. Plaintiff has also provided a phone number for Dresser-Rand on the Marshal Form.

Once a plaintiff is granted permission to proceed *in forma pauperis*, the responsibility for effecting service of the summons and complaint shifts from the plaintiff to the court. See 28 U.S.C. § 1915(d); Wright v. Lewis, 76 F.3d 57, 59 (2d Cir. 1996). See also Rivera v. Pataki, 2005 U.S. Dist. LEXIS 2747, at ** 55-56 (S.D.N.Y. Feb. 7, 2005) ("Once plaintiff provided the Marshal's Service with the information required to serve his complaint, he was absolved of further responsibility for service.")

Accordingly, this Court finds that there is "good cause" to extend the time in which plaintiff may serve the summons and complaint upon defendant an additional 120 days, Fed.R.Civ.P. 4(m); see Romandette v. Weetabix, 807 F.2d 309, 311 (2d Cir. 1986) (interpreting Rule 4(j), the predecessor subdivision to Rule 4(m)); Armstrong v. Sears, 33 F.3d 182, 188 (2d Cir. 1994), and the Clerk of the Court is again directed to cause the United States Marshal to re-serve the summons and complaint on defendant, without plaintiff's payment therefor, unpaid fees to be recoverable if this action terminates by monetary award in plaintiff's favor. Additionally, the U. S. Marshal is directed to serve the summons and complaint personally, via hand delivery, on defendant, and to

**notify the Court's Pro Se Office within 30 days of filing of this
Order of the status of service on defendant.**

Defendant shall, with the filing and service of its answer or other response to the complaint, show cause why an order should not be issued directing it to pay the Marshal Services' cost of personnel service herein. See Fed.R.Civ.P. 4 (h) (1) (A); N.Y.C.P.L.R. § 312-a(b).¹

SO ORDERED.

S/ MICHAEL A. TELESCA
MICHAEL A. TELESCA
United States District Judge

Dated: March 17, 2010
Rochester, New York

¹N.Y.C.P.L.R. § 312-a(d) provides in pertinent part:

* * *

To avoid being charged with the expense of service upon you, you must sign, date and complete the acknowledgement part of this form and mail or deliver one copy of the completed form to the sender within thirty (30) days from the date you receive it. You should keep a copy for your records or your attorney. If you wish to consult an attorney, you should do so as soon as possible before the thirty (30) days expire.

If you do not complete and return the form to the sender within thirty (30) days, you (or the party on whose behalf you are being served) will be required to pay expenses incurred in serving the summons and complaint . . . in any other manner permitted by law, and the cost of such service as permitted by law will be entered as a judgment against you.